

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--------------------------------|---|--------------------------|
| DARRYL ORRIN BAKER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 05-147E |
| |) | |
| UNITED STATES OF AMERICA |) | JUDGE McLAUGHLIN |
| GOVERNMENT OFFICIALS AT |) | |
| FCI-McKEAN, WARDEN, OFFICER |) | ELECTRONICALLY FILED |
| B. WESEMEN, MEDICAL DEPARTMENT |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT, OR
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

AND NOW, comes the Defendants, United States of America Government Officials at FCI-McKean, Warden, Officer B. Wesemen, Medical Department, by their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul E. Skirtich, Assistant U.S. Attorney for said district, and files the following Motion to Dismiss Plaintiff's Complaint, or in the Alternative, for Summary Judgment, pursuant to Rules 12(b)(1), (2), and (6) and 56 of the Fed. R. Civ. P., and respectfully moves the Court to grant the Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment in favor of the United States, upon the grounds: (1) that the Court lacks jurisdiction over the subject matter; (2) that the Court lacks jurisdiction over the parties; (3) that Plaintiff has failed to state a claim upon which relief can be granted; and/or (4) that the pleadings show that there is no genuine issue as to any

material fact, and the United States is entitled to judgment as a matter of law.

A Memorandum of Law in support of this Motion is filed with this Motion, and the contents therein are incorporated by reference as if stated herein.

WHEREFORE, the Defendants, United States of America Government Officials at FCI-McKean, Warden, Officer B. Wesemen, Medical Department, respectfully requests that the Court grant their Motion to Dismiss, or in the Alternative, Motion for Summary Judgment in favor of Defendant and against Plaintiff Darryl Orrin Baker.

Respectfully submitted,

MARY BETH BUCHANAN
UNITED STATES ATTORNEY

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment was electronically filed and/or served by postage-paid U.S. Mail on this 16th day of March, 2006, to and upon the following:

Darryl Orrin Baker
Plaintiff *Pro Se*
Reg. No. 19613-039
Federal Prison Camp
Post Office Box 2000
Lewisburg, PA 17837

s/Paul E. Skirtich
PAUL E. SKIRTICH
Assistant U.S. Attorney